

# STATE OF LOUISIANA LEGISLATIVE AUDITOR

City of Alexandria  
Alexandria, Louisiana

August 8, 2001



**Investigative Audit**

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**Daniel G. Kyle, Ph.D., CPA, CFE**  
**Legislative Auditor**

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**Daniel G. Kyle, Ph.D., CPA, CFE**

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# City of Alexandria

August 8, 2001



**Investigative Audit  
Office of the Legislative Auditor  
State of Louisiana**

**Daniel G. Kyle, Ph.D., CPA, CFE  
Legislative Auditor**

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OFFICE OF  
**LEGISLATIVE AUDITOR**  
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August 8, 2001

**HONORABLE EDWARD G. RANDOLPH, JR., MAYOR,**  
**AND MEMBERS OF THE CITY COUNCIL**  
**CITY OF ALEXANDRIA**  
Alexandria, Louisiana

Transmitted herewith is our investigative report on the City of Alexandria. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our finding and recommendation, as well as your response. Copies of this report have been delivered to the City of Alexandria; the Honorable James C. Downs, District Attorney for the Ninth Judicial District of Louisiana; the United States Attorney for the Western District of Louisiana; and others as required by state law.

Respectfully submitted,

A handwritten signature in cursive script, reading "Daniel G. Kyle", is written over a horizontal line.

Daniel G. Kyle, CPA, CFE  
Legislative Auditor

DPD:SLC:DGP:ss

[ALEXANDRIA]

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# Executive Summary

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## Investigative Audit Report City of Alexandria

The following summarizes the finding and recommendation as well as management's response that resulted from this investigative audit.

### Background (*See page 3.*)

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#### ***Highlights. . .***

- ❑ **The United States Army Corps of Engineers began an investigation in December 1996.**
- ❑ **Mr. Samuel McKay purchased property and began clearing and filling a bayou located on that property.**
- ❑ **The Corps issued a cease and desist order to Mr. McKay.**

In December 1996, the United States Army Corps of Engineers (Corps) began investigating possible violations of Section 404 of the Clean Water Act by the City of Alexandria (City) and Mr. Samuel McKay, a local developer. Approximately two months after purchasing property located in and around Bayou Robert, Mr. McKay began clearing and filling the bayou without a Department of Army permit in violation of Section 404. In July 1998, the City also began clearing and filling locations along Bayou Robert without the necessary permit, including Mr. McKay's property. Mr. McKay received a total of four cease and desist orders to halt all work in Bayou Robert, and the City received two such orders to halt its work in the bayou. Ultimately, the Corps referred the matter to the United States Environmental Protection Agency (EPA).

In September 2000, the Legislative Auditor received an allegation from the EPA's Criminal Investigative Division that the City spent public funds to improve private property owned by Mr. McKay. An investigative audit was conducted jointly between the Office of Legislative Auditor and the EPA's Criminal Investigative Division to determine the propriety of the allegation.



### ***Finding (See pages 5-9.)***

- ☐ **In August 1998, the City began clearing and filling the bayou on Mr. McKay's property.**
- ☐ **The City provided workers, equipment, culverts, sand, and fill-dirt costing at least \$7,879.**
- ☐ **City management should comply with Louisiana and federal laws.**
- ☐ **City employees should not be allowed to work on private property.**

On August 10 and 11, 1998, the City of Alexandria performed work on the private property of Mr. Samuel McKay. In a two-day period, seven employees worked removing old culverts; laying new culverts; and clearing, filling, elevating, and blending Bayou Robert on Mr. McKay's property. The City provided workers, equipment, culverts, sand, and fill-dirt. The work benefited Mr. McKay at a cost to the city of at least \$7,879 in City labor, equipment, and materials.

In addition, a United States Army Corps of Engineers (Corps) investigation revealed that the City performed work clearing and reshaping at other locations without a permit, despite being advised by the Corps of the permit requirements.

### ***Recommendation (See page 11.)***

We recommend that management comply with Louisiana and federal laws and not direct public employees to perform work on private property using public assets and without obtaining the necessary permits. We also recommend that the City implement policies and procedures to ensure that City employees do not perform work on private property and implement policies to ensure that the necessary authorities approve all work through obtaining the necessary permits. We further recommend that the District Attorney for the Ninth Judicial District of Louisiana and the United States Attorney for the Western District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

### ***Management's Response (See page 13.)***

The City of Alexandria has continuously maintained a policy, in accordance with State and Federal Law, prohibiting work by City employees on private property. However, procedures have been implemented to better train employees regarding the law and operating policies of the City of Alexandria. Managers shall receive additional training regarding State and Federal laws governing permit requirements to ensure full compliance in the future.

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# Background and Methodology

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The City of Alexandria is governed under the provisions of the Home Rule Charter adopted June 7, 1977. The City operates under a Mayor-City Council form of government and has a population of 50,726.

In December 1996, the United States Army Corps of Engineers (Corps) began investigating possible violations of Section 404 of the Clean Water Act by the City of Alexandria and Mr. Samuel McKay, a local developer. After purchasing property located in and around Bayou Robert, Mr. McKay began clearing and filling the bayou without a Department of Army permit in violation of Section 404. In July 1998, the City also began clearing and filling locations along Bayou Robert without the necessary permit, including Mr. McKay's property. Mr. McKay received a total of four cease and desist orders to halt all work in Bayou Robert, and the City received two such orders to halt its work in the bayou. Ultimately, the Corps referred the matter to the United States Environmental Protection Agency (EPA).

In September 2000, the Legislative Auditor received an allegation from the EPA's Criminal Investigative Division that the City of Alexandria spent public funds to improve private property owned by Mr. McKay. An investigative audit was conducted jointly between the Office of Legislative Auditor and the EPA's Criminal Investigative Division to determine the propriety of the allegation.

The procedures performed during this investigative audit consisted of (1) interviewing employees and officials of the City; (2) interviewing other persons as appropriate; (3) examining selected City records; (4) performing observations and analytical tests; and (5) reviewing applicable state and federal laws and regulations.

The result of our investigative audit is the finding and recommendation herein.





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# Finding

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## **THE CITY PERFORMED UNAUTHORIZED WORK IN BAYOU ROBERT ON PRIVATE PROPERTY**

On August 10 and 11, 1998, the City of Alexandria (City) performed work on the private property of Mr. Samuel McKay. In a two-day period, seven employees worked removing old culverts; laying new culverts; and clearing, filling, elevating, and blending Bayou Robert on Mr. McKay's property. The City provided workers, equipment, culverts, sand, and fill-dirt. The work benefited Mr. McKay at a cost to the City of at least \$7,879 in City labor, equipment, and materials.

In addition, a United States Army Corps of Engineers (Corps) investigation revealed that the City performed work clearing and reshaping at other locations without a permit, despite being advised by the Corps of the permit requirements.

Federal law requires a permit to be issued by the Department of Army before clearing or filling a wetland or navigable waterway. According to the Corps, this clearing or filling would include removing trees, stumps, brush and other vegetation; adding fill-dirt or other material; reshaping and re-sloping waterway banks; and channeling waterways. The Corps also considers Bayou Robert a wetland and navigable waterway.

In October 1996, Mr. Samuel McKay, a local contractor and City of Alexandria housing authority board member, purchased two undeveloped properties located on Bayou Robert. The two properties were partially connected by two 24-inch diameter culverts lying side by side approximately 20 feet long. Two months later, the Corps discovered that Mr. McKay had begun clearing and filling Bayou Robert on these properties and issued a verbal cease and desist order.

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Mr. Dru Wells, City Superintendent, wrote a letter stating that the City did not have jurisdiction of the bayou and that clearing operations on the bayou were against City policy.

In January 1997, Mr. Dru Wells, Superintendent of Streets and Parks, sent a letter to Mr. Harold Chambers, Mayor's Chief of Staff, addressing the issue of Mr. McKay's property. This letter stated that Mr. McKay requested the use of City employees to clean a portion of Bayou Robert adjacent to his property. Mr. Wells' response to this request was that the City did

not have jurisdiction over the bayou, and it was City policy not to perform clearing operations on the bayou. According to the letter, Mr. McKay then informed Mr. Wells that he was an "important person in the community" and would see that Mr. Wells was punished if his requests were not accommodated.

In February 1997, Mr. McKay requested a permit to clear vegetation and place subsurface culverts and fill material in the bed of Bayou Robert adjacent to his properties. Mr. McKay's permit was denied, and the Corps warned him in April 1997 that performing the work without a permit would subject him to civil and/or criminal action.

In January 1998, City officials met with the Corps to discuss issues relating to Bayou Robert. City officials attending this meeting included Mr. Errol Dorsey, the Assistant Director for Public Works; Mr. Larry Matthews, the City Engineer; Mr. Dru Wells; Mr. Harold Chambers; and Mr. Charles Nunnally, City Attorney. During this meeting, the Corps stated that no work could be performed on the bayou without obtaining a permit.

Although a cease and desist order was issued by the Corps, Mr. McKay continued to clear and fill the bayou. In July 1998, the Corps issued a second verbal cease and desist order and warned Mr. McKay that if the violations continued, the matter would be turned over to the Environmental Protection Agency for further enforcement action.

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**The City began working on the bayou in July 1998 without obtaining a permit. The City made improvements to the properties owned by Mr. McKay in August 1998.**

In July 1998, the City began work clearing and reshaping Bayou Robert without obtaining the necessary permit from the Corps. Mr. Wells stated that he and other City employees performed this work at the direction of Mr. Chambers. Mr. Chambers stated that he directed Mr. Wells to perform the work in the bayou; however, he could not explain why the City did not obtain a permit.

On August 10 and 11, 1998, the City removed the two 24-inch diameter by 20-foot culverts from Mr. McKay's property and replaced them with a single 36-inch diameter culvert extending 143 feet, the full length of Mr. McKay's property. In addition, the City filled, elevated, and



blended the bed of the bayou on Mr. McKay's property. Therefore, the services provided by the City increased the value of Mr. McKay's property. Since the property was partially located in Bayou Robert, this work was necessary to provide a backyard area for the houses that Mr. McKay later constructed.

**The portion of Bayou Robert cleared and filled by City employees.**



**Area filled in by City employees on property that was owned by Mr. McKay.**



Item	Cost
Labor	\$881
Equipment	2,367
Materials	4,631
<b>Total</b>	<b>\$7,879</b>

The work performed on Mr. McKay's property cost the City at least \$7,879. This amount includes labor for seven employees, equipment, and materials (*see table at left*).



**Mr. McKay did not pay for the services or materials used by the City.**

These services were provided at no cost to Mr. McKay. According to Mr. Chambers, Mr. McKay contacted him on six or seven occasions for help concerning his property. Mr. Chambers stated that although he gave Mr. Wells the order to work in Bayou Robert, they did not discuss the work on Mr. McKay's property. Mr. Wells stated that he discussed the work on Mr. McKay's property with both Mr. Chambers and Mr. Darryl Williamson, Director of Public Works.

**Clearing work performed on Mr. Chambers' property by City employees.**

The City performed work at several other locations along Bayou Robert, including property belonging to Mr. Chambers. The work on Mr. Chambers' property included removing beaver dams and clearing Bayou Robert along his property. Mr. Chambers said that although he did not direct Mr. Wells to do the work along his property, he did ask the City to perform the work.





These actions described may be violations of the following laws:

- R.S. 14:67, "Theft"<sup>1</sup>
- R.S. 14:134, "Malfeasance in Office"<sup>2</sup>
- R.S. 14:138, "Payroll Fraud"<sup>3</sup>

The actual determination as to whether the individual is subject to formal charge is at the discretion of the district attorney.

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<sup>1</sup> R.S. 14:67 provides, in part, that theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.

<sup>2</sup> R.S. 14:134 provides, in part, that malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.

<sup>3</sup> R.S. 14:138 provides, in part, that payroll fraud is committed when any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.



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# **Recommendation**

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We recommend that management comply with Louisiana and federal laws and not direct public employees to perform work on private property using public assets and without obtaining the necessary permits. We also recommend that the City implement policies and procedures to ensure that City employees do not perform work on private property and implement policies to ensure that the necessary authorities approve all work through obtaining the necessary permits.

In addition, we recommend that the District Attorney for the Ninth Judicial District of Louisiana and the United States Attorney for the Western District of Louisiana take appropriate legal action, to include seeking restitution.



# **Attachment I**

## **Management's Response**





July 25, 2001

Daniel G. Kyle, CPA, CFE  
Legislative Auditor  
State of Louisiana  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Re: City of Alexandria's July, 2001 Audit Report

Dear Mr. Kyle:

In response to the Investigative Audit Report received on July 13, 2001, I am submitting the following as Management's Response to the recommendations listed in your report.

The City of Alexandria has continuously maintained a policy, in accordance with State and Federal law, prohibiting work by City employees on private property.

However, procedures have been implemented to better train employees regarding the law and operating policies of the City of Alexandria.

Managers shall receive additional training regarding State and Federal laws governing permit requirements to insure full compliance in the future.

Respectfully submitted,

Edward G. Randolph, Jr.  
Mayor, City of Alexandria



